

Remarks

In the office action, claims 11 to 17 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 11 to 18 were rejected under 35 U.S.C. § 102 as being anticipated by JP 279300 and Liu. Claims 19 to 24, 26 and 27 have been canceled.

Claims 11, 14, 15 and 16 have been amended, as per discussions with the Examiner. Claims 11 to 18 and 25 are pending.

A. SUMMARY OF INTERVIEW

Applicant thanks the Examiner for granting an interview on February 8, 2005. During that interview, which took place in person between Applicants' attorney, William C. Gehris (Reg. No. 38, 156) and Examiner Qazi and Examiner Mark Clardy, the 112 and 102 rejections to claims 11 to 18 were discussed. Agreement was reached to define in claim 11 the filter in terms of molecular cut off weight instead pore size, and that this limitation would not present a new matter issue, as the terms are understood as compatible. See for example http://www.dfrc.wisc.edu/RS98_pdfs/wwwpp23-25.pdf. Claims 14, 15 and 16 were discussed, and the term raw was agreed to as a substitute for "primary" in claim 14. No agreement to claims 15 and 16 was reached, but Mr. Gehris stated he would consider amending the claims.

The limitation of claim 11 that the extract consists essentially of extract which "is produced by ultrafiltration using a filter having an average molecular weight cut off ranging from 2000 to 10000 Daltons" was discussed, and Examiner Clardy agreed that the extract which results from such a process would be different from a product which did not undergo such a process. Mr. Gehris states that such a product would clearly consist essentially of particles smaller than those found in JP 279300, as the product of JP 279300 is discussed in the specification at page 11 and only according to the present invention subjected to ultrafiltration. The products of JP 279300 and the present invention as claimed in claim 11 thus clearly are different. Examiner Qazi stated she would conduct a further search and reconsider the rejection. No agreement was reached.

B. REJECTIONS UNDER 35 U.S.C. § 112

Claims 11, 14, 15 and 16 have been amended in view of the 112, second paragraph rejection.

Claim 11 has been amended to recite that the average molecular weight cut off (MWCO) of the filter ranges from 2000 to 10000 Daltons. As discussed, this is an interchangeable term to pore size and presents no new matter. See for example http://www.dfrc.wisc.edu/RS98_pdfs/wwwpp23-25.pdf.

With respect to claim 14 the term “raw” instead of primary was used, as agreed to and as interchangeable as per for example original claim 3.

Claims 15 and 16 have been amended for clarity and support is found for example at page 10, lines 12 to 22 for the partially purified extract (claim 15), and page 10, line 22 for claim 16.

Withdrawal of the rejections under 35 U.S.C. 112 is respectfully requested.

C. REJECTIONS UNDER 35 U.S.C. § 102

Claims 11 to 18 were rejected under 35 U.S.C. § 102 as being anticipated by JP 279300 and Liu.

Neither JP 279300 nor Liu disclose a “water-soluble, native dry extract consisting essentially of Ginkgo biloba plant part constituents, wherein the extract is produced by ultrafiltration using a filter having an average molecular weight cut off ranging from 2000 to 10000 Daltons and wherein the extract lacks any solubilization agents.”

Neither JP 279300 nor Liu discloses ultrafiltration at all.

As per MPEP 2113, the process limitation in a product-by-process claim must be considered and if the process imparts a distinct structural characteristic or unobvious difference the claim is still patentable.

It is very clear from the present specification that the extract which results after ultrafiltration according to claim 11 is novel and non-obvious over the JP 279300 extract. In fact, as described for example in the present specification at page 11, line 3 et seq, extracts from JP 279300 may be subjected to ultrafiltration according to the present invention, and thus the present resultant product clearly is different from the JP 279300 product, which has different

particle sizes than that which results from claim 11, which consists essentially of the ultrafiltered extract. The ultrafiltered extract of the present invention has excellent solubility qualities as discussed at page 9, lines 1 to 8 for example.

Liu also does not disclose ultrafiltration.

Withdrawal of the rejections to claim 11 and its dependent claims is respectfully requested.

With further respect to claim 17, claim 17 recites the dry extract of claim 11 comprising a content of:

- at least 20 % flavonglycosides by mass,
- at least 5 % terpenlactones by mass, and
- at most 5 parts per million (ppm) ginkgolic acids.

There is no disclosure in JP 279300 or Liu with regard to the concentration of ginkgolic acids being “at most 5 parts per million” nor has the Office Action asserted any.

With further respect to claim 18, claim 18 recites the dry extract of claim 11 comprising a content of:

- at least 22 - 27 % flavonglycosides by mass,
- at least 5 - 7 % terpenlactones by mass,
- at least 2.8 - 3.4 % ginkgolides A, B, C by mass,
- at least 2.6 - 3.2 % bilobalide by mass, and
- at most 5 ppm of ginkgolic acids.

Neither JP 279300 nor Liu discloses “at least 2.8 - 3.4 % ginkgolides A, B, C by mass, at least 2.6 - 3.2 % bilobalide by mass, and at most 5 ppm of ginkgolic acids as claimed.

Withdrawal of the rejections to claims 17 and 18 for this reason as well is respectfully requested.


D. CLAIM 25

It is respectfully requested that claim 25, which was subject to a restriction requirement, be reinstated with claims 11 to 18, as claim 25 is directed to the product not the method.

CONCLUSION

In view of the amendments made and arguments presented, Applicants respectfully submit that claims 11 to 18 and 25 are in condition for allowance.

Respectfully submitted,
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